

In re WILLIAMS ET AL., Application No. 09/894,199  
Amendment B

### REMARKS

The non-final Office action dated September 27, 2005, and the references cited have been fully considered. In response, please enter the following amendments and consider the following remarks. Reconsideration and/or further prosecution of the application is respectfully requested.

First, Applicants appreciate the notification that claims 10-14 and 42-46 are allowed, and claims 2-4, 8, 19-21, 25, 27-29, 33, 35-37, and 41 are object to.

Applicants note, that the MPEP and law is clear that for anticipation, the reference *must teach each and every aspect of the claimed invention* either explicitly or impliedly, and the burden is on the Office to present a *prima facie* case of anticipation. MPEP § 706.02. Inherent means it *must* occur. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112 (*emphasis in original*).

In regards to the rejections of claims 1, 5-7, 18, 22-24, 26, 30-32, 34, and 38-40. Applicants have amended each of independent claims 1, 18, 26, and 34 to expressly define the term "timing difference" in the claim to be a measured time duration, with support provided by the originally filed application, for example on page 7, line 20 (rate controller 203 determines a relative time duration). Thus, for example, claim 1 recites "determining a timing difference...wherein the timing difference is a measured time duration," which is neither taught nor suggested by the prior art of record. Therefore, the § 102 rejections of claims 1, 18, 26, and 34 based on Frazier et al., US Patent RE38,309 E, and the § 102 rejections of claims 1, 18, 26, and 34 based on Donoghue, US Patent 6,882,622, are more clearly not valid, as the prior art of record neither teaches nor suggests all the claim limitations. The Office action relies on the occurrence of one event occurring before the another event (such as XON then XOFF) for teaching a timing difference. As each of the claims recite the patentably distinct limitation (i.e., the prior art of record neither teaches nor suggest determining the time duration between occurrence of these recited two events rather these references merely rely on what state they are

In re WILLIAMS ET AL., Application No. 09/894,199  
Amendment B

currently in - either the XON state or the XOFF state), Applicants respectfully traverse all claim rejections, and request the withdrawal of the claim rejections of independent claim 1 and its dependent claims of 5-7, independent claim 18 and its dependent claims of 22-24, independent claim 26 and its dependent claims of 30-32, and independent claim 34 and its dependent claims of 38-40.


In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over all prior art of record, and if the Office complies with MPEP § 706 and 37 CFR 1.104(c)(2), then the Office cited the best prior art references available. As the prior art of record neither teaches nor suggests all the claim limitations of the pending claims, then all pending claims are believed to be allowable over the best prior art available, and Applicant requests all rejections be withdrawn, the claims be allowed and the application pass to issuance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney, as Applicant is open to discussing, considering, and resolving issues.

Applicants believe that no extension of time is required. However, if one should be determined as necessary, Applicants hereby request/petition for such extension of time and the Commissioner is hereby authorized to charge Deposit Account No. 501430 for any fee that may be due in connection with such a request for an extension of time.

Respectfully submitted,  
The Law Office of Kirk D. Williams

Date: December 27, 2005

By

 12-27-2005

Kirk D. Williams, Reg. No. 42,229  
One of the Attorneys for Applicants  
Customer Number 26327  
The Law Office of Kirk D. Williams  
1234 S. OGDEN ST., Denver, CO 80210  
303-282-0151 (telephone), 303-778-0748 (facsimile)